IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 963 OF 2003
with
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For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAFIKAHMED SULEMANBHAI KOVDIYA

Versus

ARVINDBHAI K PATEL

Appearance:

1. First Appeal No. 963 of 2003
MR ZUBIN F BHARDA for Appellant No.
RULE SERVED for Respondent No. 1-2
MS MEGHA JANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 02/12/2004

COMMON ORAL JUDGEMENT

In this batch of four Appeals, filed under Section 173 of the Motor Vehicle Act 1988 ('the Act' for short), appellants/original claimants seek to challenge composite order dated 13.12.2001 recorded below application under Section 140 of the Act in MACP Nos. 230 of 1999, 389 of 1999, 390 of 1999 and 750 of 1999 by the MACT (Auxiliary), Sabarkantha District at Himmatnagar, by which applications filed by the appellants under Section 140 of the Act under 'no fault liability' claiming compensation of Rs.25,000 for resultant injury and the disability which they have received in a road accident which had taken place on 7.12.1998 at 10:30 AM at Idar Railway crossing by the vehicle involved in the accident, i.e. Tractor bearing registration no. GAD 9850, came to be rejected.

2. As per the claim put forth by the appellants/claimants before the MACT (Auxiliary) and as mentioned in the FIR, on 7.12.1998 at 10:30 AM all the appellants were standing near Idar Railway crossing, at that time one vehicle, i.e. Tractor bearing registration No. GAD 9850 driven in a rash and negligent manner by opponent No.1 came there and dashed the said Tractor with the appellants, as a result of the same all the appellants standing there received injuries and thereafter Driver of the said Tractor flee from the scene of the accident. Since all the appellants received injuries as a result of the accident they were admitted either in Government hospital or in private hospital and were given treatment. There is no dispute that all the appellants have received fracture resulting into permanent partial disability. It is true that FIR came to be lodged after 1 month and 18 days.

3. Since all the appellants have received injuries in the accident, they have filed MACP Nos. 230 of 1999, 389 of 1999, 390 of 1999 and 750 of 1999 to receive compensation from the Driver, owner and the Insurance Company of the Tractor involved in the accident. Along with the petitions, appellants have also filed application under Section 140 of the Act under 'No fault liability' principle, claiming compensation of Rs.25000, during the pendency of the petitions. The Tribunal, on appreciation, evaluation and analysis of the evidence produced by the claimants, came to the conclusion that, since the FIR was lodged at a belated stage, i.e. after 1 month and 18 days, factum of the accident has become doubtful. However, he has observed that the appellants

have filed FIR, Panchnama, RC Book, Insurance Policy, Injury certificate, Disability certificate and copy of the charge sheet. Notwithstanding the aforesaid fact, Tribunal has rejected the claim of the appellants for compensation of Rs.25000 under 'No fault liability' principle, which has given rise to this batch of four appeals at the instance of the original claimants.

4. Mr. Zubin F. Bharda, learned advocate of the appellants, states that provisions of Section 140 of the Act - to claim interim compensation under 'No fault liability' principal is a benevolent piece of legislation which is required to be decided by way of summary trial and, in order to get the compensation, claimants are required to produce the following documents as per Rule 231 of the Gujarat Motor Vehicle Rules, 1989 ('the Rules' for short):

(i) Injury certificate coupled with disability certificate.

(ii) Injury certificate or Post-mortem report in case of death.

(iii) Registration certificate of the motor vehicle involved in the accident.

(iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks.

(v) The nature of the treatment given by the medical officer who has treated the victim.

5. In the instant case, all the documents as envisaged under Rule 231 of the Rules have been produced. Inspite of that, the Tribunal has rejected the claim, therefore, the said order is required to be quashed and set aside by allowing the applications filed by the appellants under Section 140 of the Act and thereby to award compensation of Rs.25000 to each of the appellants together with interest @ 9% during the pendency of the petitions. He, therefore, urged to allow these appeals.

6. In counter submission, Ms. Megha Jani, learned advocate for respondent - the New India Insurance Company has contended that the orders which are impugned in this batch of Appeals do not call for any interference in view of the fact that the accident has become doubtful as the FIR came to be lodged at a belated stage and therefore Tribunal has very rightly rejected the applications. It

is, therefore, urged to dismiss the Appeals.

7. This Court has given anxious considerate thought to the submissions made by the learned advocates appearing for the parties and also perused the averments made in the Memo of the Appeals, impugned orders passed by the MACT (Auxiliary) Sabarkantha District at Himmatnagar and gone through the documents supplied by the learned advocates appearing for the parties during the course of their submissions.

8. At the outset, it may be appreciated that the amount awarded under 'No fault liability' principle, that is, under Section 140 of the Act is an interim compensation and obviously it is subject to adjustment against the final award that will be passed in Motor Accident Claim Petitions which are still pending before the Tribunal. This principle is established by the Supreme Court in the case of the Oriental Insurance Company Limited v/s Hansarajbhai V. Kodala, 2001 (4) JT, 477.

9. On having perusal of the impugned orders, it is seen that the Tractor bearing registration No. GAD 9850 driven by opponent No.1, owned by opponent No.2 and insured with the opponent No.3 was involved in an accident and all the appellants standing near Idar Railway crossing were knocked down by the driver of the Tractor by driving the Tractor in a rash and negligent manner and thereafter Driver flee from the place of occurrence. As a result thereof, all the appellants received injuries and therefore they were treated in Government hospital or private hospital and thereafter FIR came to be lodged after 1 month and 18 days. It may also be appreciated that the charge sheet is also filed in connection with the said accident. Therefore, during the course of investigation, on the basis of the FIR, the factum of accident and the involvement of vehicle in the accident is established. It may also be noted that the appellants have also produced the following documents before the Tribunal:

(i) RC Book of the involved vehicle Tractor No. GAD 9850.

(ii) Insurance policy of the said involved Tractor.

(ii) Panchnama of the place of occurrence.

(iii) Injury certificate of the victim.

(iv) Disability certificate of the victim.

(v) Copy of the charge sheet of Idar Town Police Station being I-Criminal Case No. 1499.

On the basis of the aforementioned documents, there is no manner of doubt that the factum of accident and involvement of vehicle is very much established. It is also established that all the appellants have received injuries in the accident in the nature of fracture resulting into permanent partial disability of their limbs.

10. From sub Rule (5) of Rule 231 of the Rules it is clear that the summary trial is contemplated for making an award or order under Section 140 of the Act. The defence as presently made by the insurer is obviously an issue in the main petition and it will have to be decided in that petition by leading elaborate evidence. The contention that FIR is lodged at belated stage and, therefore, cannot be looked into at this stage has no substance.

11. In aforesaid view of the matter, this Court is unable to agree with the observations made by the MACT (Auxiliary) Sabarkantha District at Himmatnagar that since the FIR is lodged at a belated stage, factum of accident has become doubtful. On the contrary, there is voluminous evidence and therefore charge sheet is also filed against the Driver of the vehicle showing that the accident did take place with the said Tractor and rusultantly all the appellants sustained grave injuries in the nature of fracture and permanent partial disability. Not only that, but who was the insurer of the vehicle involved in the accident was also proved, therefore, orders which are impugned in this batch of Appeals cannot be sustained and are deserved to be quashed and set aside. Therefore, according to this Court, all the opponents are jointly and severally liable to pay the amount of compensation to the tune of Rs.25000 to each of the appellants together with interest @ 9% from the date of filing of this application till the amount is deposited in the Tribunal. Needless to mention that the amount awarded by this order shall be adjusted against the final award that may be passed in the main claim petitions.

12. For the foregoing reasons, all the appeals succeed and accordingly they are allowed. Order dated 13.12.2001 recorded below application under Section 140 of the Act in MACP Nos. 230 of 1999, 389 of 1999, 390 of

1999 and 750 of 1999 by the MACT (Auxiliary) Sabarkantha District at Himmatnagar, rejecting the applications filed in the claim petitions are hereby quashed and set aside. All the appellants are entitled to recover a sum of Rs.25000 together with interest @ 9% from the date of filing of this application till the amount is deposited in the Tribunal, as an interim compensation, during the pendency of the petitions, from all the opponents who are jointly and severally liable to pay the amount of compensation.

13. Ms. Megha Jani, learned advocate of Respondent No.3 - the New India Insurance Co. Ltd. states that the insurance company shall deposit the aforesaid amount within a period of four weeks in the MACT (Auxiliary), Sabarkantha District at Himmatnagar. On amount being deposited by respondent No.3 - the New India Insurance Company Ltd. in the Tribunal as stated above, the Tribunal is directed to pass appropriate orders with regard to disbursement and investment of the amount in favour of the appellants/claimants.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*